

Remarks

The non-final Office Action dated February 28, 2007 has been reviewed and the following remarks are made in response thereto. In view of the following remarks, Applicants respectfully request reconsideration of this application and timely allowance of pending claims. Written support for the claim amendments are found throughout the specification and in the original claims, thus Applicants submit that no prohibited new matter has been added.

Rejections under 35 U.S.C. 112

Claims 60, 62-65, 72, 73 and 75 were rejected under 35 U.S.C. 112 (first paragraph) for allegedly failing to comply with the written description requirement. Without acquiescing to the merits of the Examiner's rejection, Applicants have cancelled claims 60, 72 and 73 thereby rendering the rejection as to these claims moot.

The Examiner purported that the specification did not have adequate written description for an expression profile which comprises descriptive information for a subject. Without acquiescing to the merits of the Examiner's rejection, and solely to expedite prosecution of the instant application, Applicants have amended claim 62 to clarify that the database further comprises descriptive information from the subject. Written support for this claim amendment is found throughout the specification and thus no new matter has been added. Representative support for this claim amendment is located in the specification, page 14, line 31 through page 15, line 9. Accordingly, Applicants respectfully request that the rejection of claims 62-65 under 35 U.S.C. 112 (first paragraph) be withdrawn.

The Examiner also purported that the specification did not have adequate written description for a database comprising data for "at least 20" or "at least 50" nucleic acid sequences. Applicants have cancelled claims 60, 72 and 73 thereby rendering the rejection as to these claims moot. Without acquiescing to the merits of the Examiner's rejection, and solely to expedite prosecution of the instant application, Applicants have amended claim 75. The amended claim clarifies that the expression profile of the test sample comprises statistical measures of differential expression of five or more nucleic acid sequences selected from SEQ ID NO: 1 to 1124. Applicants point out that the instant specification provides that the expression levels of at least about 2, 3, 4, 5, 6, 7, 8, 9, 10 or more genes in any of Tables 1-6 may be detected (specification, page 3, lines 26-27). Accordingly, Applicants respectfully request that the rejection of claim 75 under 35 U.S.C. 112 (first paragraph) be withdrawn.

Lastly, claims 58, 59, 61 and 74 were rejected under 35 U.S.C 112 (second paragraph) as being indefinite. Without acquiescing to the merits of the Examiner's rejection, and solely to expedite prosecution of the instant application, Applicants have amended claims 58, 59 and 61 such that the claims recite "nucleic acid sequences" which has proper antecedent basis. Accordingly, Applicants respectfully request that the rejection of claims 58, 59 and 61 be withdrawn.

The Examiner purported that the recitation of "expression of SEQ ID NO: 1 to 1124" in claim 74 was unclear. Without acquiescing to the merits of the Examiner's rejection, and solely to expedite prosecution of the instant application, Applicants have amended claim 74 to recite "expression of each of SEQ ID NO: 1 to 1124." Applicants point out that the instant specification provides that the expression levels of at least about 2, 3, 4, 5, 6, 7, 8, 9, 10 or more genes in any of Tables 1-6 may be detected, and in a preferred embodiment, all of the genes in Tables 1-6 may be detected (specification, page 3, lines 26-27). Accordingly, Applicants respectfully request that the rejection of claim 74 be withdrawn.

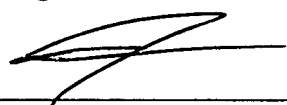
Conclusion

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, she is invited to telephone the undersigned at her convenience.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

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Respectfully submitted
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